

**Indefiniteness 112/2**

The office action objected to the non-limiting recitation of an intended utility in the preamble of claim 1 as either functional or grammatically incorrect. Applicant respectfully traverses. The recitation of intended utility in a claim preamble is a well-accepted practice, indeed utility is a requirement under section 101, and does not generally introduce a limitation into the claim or render the claim per se indefinite. See MPEP 608.01(p); *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). Since it does not usually introduce a limitation into the claims, a fortiori the preamble cannot render the claim indefinite under 112/2. See *STX v. Brine, Inc.*, 54 USPQ3d 1347, 1349 (Fed. Cir. 2000) (preamble phrase for lacrosse stick frame "which provides improved playing and handling characteristics"). The use of functional language is not objectionable, especially where the functional language does not define the point of novelty.

As for the alleged grammatical incorrectness, undersigned counsel for applicant has reviewed the claim language and can discern no error. Applicant would be grateful if the examiner would more clearly point out the alleged error, and applicant will then endeavor to address it. It is respectfully submitted that "administering to pugilists between rounds" is clearly understood by the skilled artisan as rendering the services of first aid, hydration, massage, etc. See paragraph 2 in the specification. Similarly, effecting such administration "essentially free of fluid deposition upon a floor of the boxing ring" is readily appreciated and understood by one of skill in the pugilistic arts where such spillage has been a pervasive problem until applicant's invention was able to prevent fluids from rendering the boxing ring floor slippery. The rejection is respectfully traversed.

Claims 7 and 18 were also rejected on the ground that "impervious layer" is unclear regarding what properties or materials the layer is impervious to. The examiner apparently overlooked applicant's disclosure at paragraph 20 defining this term and making it clear for one skilled in the art that impervious means that it inhibits fluids such as water from passing. It is believed that there is no ambiguity in this regard and that one skilled in the art can readily determine

whether he will be infringing or not. It is respectfully requested that the 112/2 rejection should be withdrawn.

### **Obviousness 103**

#### **Oregon BWC**

The primary reference cited in the office action is Oregon BWC. This reference basically provides each boxer and those administering to the boxer between rounds a towel and imposes sanctions for the excessive use of water on the boxer. In contrast, applicant's invention employs a pad under the boxer to catch excess fluids. There is no teaching or suggestion that the single Oregon BWC towel should be used or configured in this manner. Indeed, the need to use the towel to wipe down the boxer would preclude its use under the boxer's chair or stool to catch fluids that are not wiped from the boxer's body. The admonishment against excessive use of water teaches squarely against the use of a catch pad as in applicant's invention, since the reason for the admonishment is to avoid letting the boxing floor become slippery from the water or interrupting the contest for drying or mopping the floor after the fact.

As a basic principle of patent law, there must be some motivation or guidance in the prior art reference that suggests the modification claimed by an applicant before a 103 rejection can be supported. The reference must not only make the invention obvious to try, but must also suggest the results of applicant, before the invention can be said to be obvious under 103. The examiner is not allowed to use hindsight reconstruction, drawing from applicant's own disclosure as a road map, to selectively pick and choose various features from a reference while ignoring other contrary teachings.

It is clear that the prior art manner of conducting a boxing contest as described in Oregon BWC, does not teach or suggest the use of a mat under and/or around the boxer's seat to catch excess fluids, and does not teach or suggest the results that the floor becomes slippery less often, that the contest is not interrupted or delayed for mopping, and that the boxers can use more water between rounds with less fear of sanctions for using excess water than would otherwise be deemed "excessive" under the Oregon BWC. This reference

teaches squarely away from applicant's invention, fails to provide any motivation or guidance for applicant's invention, does not suggest any benefits, and certainly would not have rendered the huge mental leap to applicant's invention obvious to the skilled artisan.

As to claim 8, steps c, d and f are not disclosed in Oregon BWC, and are not obvious therefrom. Every feature of a claim must be taught or suggested in order to establish prima facie obviousness. Applicant respectfully requests credible evidence be made of record to support the alleged obviousness of these missing features.

As to claim 11, the Oregon BWC discloses the chief second supplies a towel, and there is no disclosure that a mat is supplied. As noted above, the Oregon BWC towel is for use on the body of the pugilist, not under his seat. Every feature of a claim must be taught or suggested in order to establish prima facie obviousness. Applicant respectfully requests credible evidence be made of record to support the alleged obviousness of this missing feature.

As to claim 15, Oregon BWC specifically acknowledges that the match will be interrupted or delayed to wipe fluid from the floor of the boxing ring, and clearly does not at all teach or suggest applicant's claimed invention. The use of a mat helps avoid the very fluid deposition on the floor of the ring specifically contemplated in Oregon BWC. Every feature of a claim must be taught or suggested in order to establish prima facie obviousness. Applicant respectfully requests credible evidence be made of record to support the alleged obviousness of this feature.

#### **Gaudet**

As to claims 1, 5-6, 16-17, Gaudet fails to bridge the gap between Oregon BWC and applicant's claimed invention. Gaudet teaches a mat or rug that goes around a toilet or other plumbing fixture. This reference is so far afield from pugilist contests that the skilled boxing ring designer would not possibly look to this art for guidance—it is a nonanalogous art reference. Even if it were analogous, it would still have failed to suggest the use of an absorbent mat held in place under the seat of a boxer between rounds prior to applicant's invention.

The Gaudet mat goes around the base of a toilet and thus needs suction cups 13 and/or U-shaped retaining element to hold the mat in place. This would not work very well at all in the boxing ring where the mat can be held in place against the floor by the weight of the seated boxer and it is necessary to quickly place and remove the mat in the scant one minute allowed between rounds. Nothing teaches, suggests, or even provides a modicum of motivation for placing the seat on the mat as in applicant's invention: Oregon BWC's chief second provides a towel for the boxer, which could not be so used if it were under his seat, and Gaudet places nothing at all on the mat. The very age of Gaudet (1923) establishes that there are secondary considerations present here: the long existence of the implementing arts and elements and the fact that no one has heretofore discovered applicant's invention, including its benefits, is objective evidence of nonobviousness.

Specifically as to claims 6 and 16-17, Gaudet does not all teach or suggest that the mat should have edges to align with the edges of the boxing ring floor, e.g. at 90 degrees. If anything, Gaudet suggests that the edges of the mat should terminate freely or paralleling, and unconstrained on a flat surface, and not on the edge of anything, let alone at the edges of a boxing ring floor where there are no plumbing fixtures. Conversely, there is no disclosure in Oregon BWC that teaches or suggests, or even provides motivation, for making the mental leap from a towel used on the contestant's body or even as an after-the-fact mop, on the one hand, to a mat underlying the contestant's seat and conforming to the shape of the boxing ring corner. Without impermissibly using hindsight reconstruction, the unlikely combination of the non-analogous Oregon BWC and Gaudet references would have more logically resulted in a mat that wraps around the outer contours of the seat with suction cups, rather than being placed under the seat where it is securely held in place under the legs between rounds.

### **Sullens**

As to claims 2-4 and 9, 10 and 12, Sullens fails to bridge the gap between the prior art and the present invention. Sullens discloses a rectangular high chair

drop cloth system for feeding infants. Again, this reference is so far afield from what a skilled pugilistic contest facility designer would consult for guidance that it must be considered non-analogous. Even so, the bare disclosure of logos fails to teach or suggest that the logo should be on an obverse side of the mat, or in an apron area of the mat around the boxer's seat so that it can be readily viewed by spectators. Indeed, the prior art totally fails to even disclose the seat-mat-apron system, let alone the placement of a trademark thereon. Applicant respectfully traverses the assertion that the alleged disclosure of imprinted logos of Sullens even remotely suggests the recording of contest data on a printable area of such a mat. Sullens is concerned with the imprinting of the manufacturing logo, and not the provision of an area on the mat that can be written upon by the consumer after receipt or use, or signed by the boxer, or printed with specific use or contest data. See paragraph 19 of the specification. Sullens fails to teach or suggest the printable area feature as claimed, and even if it did, it further fails to provide any motivation or guidance for any such modification of Oregon BWC and/or Gaudet.

#### **Desson**

As to claims 7 and 18, Desson similarly fails to fill the gap between Oregon BWC and/or Gaudet and applicant's invention. Desson is directed to a roll-blotting towel, and is thus at best cumulative to Oregon BWC's provision of a towel for the boxer's body. The very purpose of Desson is to provide roll-blotting action to avoid rubbing against the skin of the user. Such a rolling potential could interfere with securing the mat in place against the boxing ring floor by the weight of the pugilist (see claim 1, last two lines), as sliding of the seated boxer would be undesirable. Desson thus appears to teach against applicant's boxing ring configuration and method as defined in claims 7 and 18.

#### **Koiduka**

As to claims 13 and 14, Koiduka fails to bridge the gap between applicant's invention and Oregon BWC. Koiduka is cited for placing a thermoplastic resin seal with a specified name on a door mat. Koiduka says nothing at all about using a catch mat under a pugilist's seat between rounds,

and thus provides no guidance or motivation for the purported modification of Oregon BWC. Koiduka appears to be from a non-analogous art and is not an applicable reference. Even so, Koiduka does not teach or suggest putting contest data on a mat. Indeed, neither reference even remotely suggests this. The Oregon BWC towel is used on the boxer, not under his seat, and is not written on; Koiduka applies a thermoplastic seal onto a plastic doormat that is not even used in boxing. Koiduka does not even contemplate a boxer's signature, i.e. the name of the person written with his own hand as is the commonly understood definition of "signature" which is used in the claims. The application of a plastic seal does not at all teach or suggest handwriting by the signer, which creates a memento or collectible of the contest. See the specification at paragraphs 4 and 19. It is simply not possible to combine Oregon BWC and Koiduka as asserted in the office action to obtain applicant's invention without impermissibly using hindsight reconstruction to bridge the vast chasm between these references and the claimed invention.

#### **Canning**

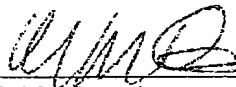
As to claims 19-24 directed to a lay-flat mat for use under the seat of a pugilist during a rest period between rounds of a boxing match, Canning has been applied as the primary reference. Canning discloses an absorbent mat, but does not disclose such a mat specifically adapted for use in a contest of pugilists, i.e. adjacent edges at a right angle, a cutout for the corner post, a central area for the boxer's seat, an apron area, and an obverse trademark. As such Canning fails to teach or suggest, or even to provide motivation for such modifications. The shortcomings of the additional references of Gaudet, Desson, Sullens, Koiduka and Oregon BWC are as noted above. For example, no reference teaches or suggests a cutout for a corner post of a boxing ring in an absorbent mat, a trademark in an apron area, a printable area, a contestant's signature, or a contestant's body fluid stains. Applicant's invention is a significant and meritorious advance in the art that provides functions, results and benefits heretofore unachieved in the prior art of record.

**Conclusion**

Accordingly, it is respectfully submitted that no reference of record, alone or in combination, teaches or suggests applicant's invention. All objections and rejections have been overcome. Allowance of all claims is respectfully solicited.

October 2, 2002  
Date

Respectfully submitted,



---

Daniel N. Lundeen  
Reg. No. 31,177  
**LUNDEEN & ARISMENDI, L.L.P.**  
P.O. Box 131144  
Houston, Texas 77219-1144  
(713) 652-2555 Telephone  
(713) 652-2556 Facsimile